



DIGEST - L-CP

COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

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B-169088

MAR 20 1970

Mr. Stanley J. Treasure
Authorized Certifying Officer
Through Chief, Accounting Branch
Fiscal Management Division
Internal Revenue Service
U. S. Department of the Treasury

Dear Mr. Treasure:

Your letter of January 30, 1970, reference D:MI:DC:F, requests a decision as to whether a voucher in the amount of \$248 drawn in favor of Mr. William F. Long may be certified for payment under the following circumstances.

Mr. Long was appointed on September 26, 1966, and was ordered for induction into the armed forces of the United States effective October 25, 1966. He states that he was advised he was entitled to 15 days military leave; related personnel documents substantiate his statement. Mr. Long was paid for October 24 as being on annual leave for that day and he was paid for the period October 25 to November 5 as being on military leave. He was not entitled to annual leave since the 90-day waiting period was not complete, and he was not entitled to military leave since he was not a reservist. Mr. Long repaid the amount overpaid him and has requested a refund and that waiver of the overpayment be granted.

The Chief, Counsel, IRS, recommends that the overpayment be waived and that Mr. Long's request for refund be approved. Since the overpayment relates primarily to military leave you request our decision as to whether you may certify the proposed repayment.

5 U.S.C. 6323(a) in pertinent part provides:

"An employes * * * is entitled to leave without loss of pay * * * for each day, not in excess of 15 days in a calendar year, in which he is on active duty or is engaged in field or coast defense training under sections 502-505 of title 32 as a Reserve of the armed forces or member of the National Guard."

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Part 201 - Standards for Waiver - 4 CFR 201.2(b) provides:

" 'Pay' means salary, wages, pay, compensation, emoluments, and remuneration for services. It includes overtime pay; night, Sunday standby, irregular and hazardous duty differential; pay for Sunday and holiday work; payment for accumulated and accrued leave; and severance pay. * * *"

The fact that payment for military leave is not specifically mentioned as an item included within the definition of pay contained in the quoted regulation is not controlling. The waiver provisions of section 5504 of title 5, United States Code, and implementing regulations apply specifically to overpayments of pay. Entitlement to military leave under the quoted Code provision is phrased in terms of an entitlement "without loss of pay."

Since the overpayment in question thus resulted from erroneous continuation of Mr. Long in a pay status, the statute and regulations are clearly applicable.

The voucher which is returned herewith may be certified for payment provided the Chief Counsel's recommendation for waiver is appropriately approved.

Very truly yours,

R.F.KELLER

Assistant Comptroller General
of the United States

Enclosure